

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1233 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMARSINHJI MILLS LTD

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL for Petitioner
MS HANSA PUNANI, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 13/04/99

ORAL JUDGEMENT

The petitioner challenges the order dated 24th December, 1986 passed by the State Government, rejecting the Revision Application of the petitioner, which was preferred against the order of the Collector dated 5.7.1986, by which the land in question was resumed on the ground that it was not being used by the petitioner

for the purpose it was leased out, which was "Vyayam Shala". The land in question admeasuring 10,000 sq.yards was given on lease to the petitioner by the erstwhile ruler of Wankaner for being used as "Vyayam Shala". It was stipulated in the order that it would not be put to any other use. On 17.10.1984, the Collector issued a show cause notice on the petitioner that since the land was not being used for "Vyayam Shala", it was proposed to be resumed. In the show cause notice dated 17.10.1984, the only ground which was alleged was that the land was not being used for the purpose it was granted. There was no mention of any enquiry or other papers which would throw any light on the question as to whether the land was being used for the purpose for which it was given on lease. By order dated 5th July, 1986, the Collector holding that the land was leased out only for the purpose of a Vyayam Shala and taking into account the representation made by the workers' union of the petitioner's mill and 101 applications made from the surrounding area as well as the report of the Mamlatdar, found that the land was not being utilised for the purpose for which it was given under the order dated 7.5.1946 and determined the lease on the ground that there was breach of the conditions of the lease. That order was confirmed in Revision by the State Government.

It was contended on behalf of the petitioner that the impugned order terminating the lease and resuming the land, was made in violation of the principles of natural justice, inasmuch as the concerned authority had relied upon the material, which was never disclosed to the petitioner. It was also submitted that earlier similar notices were given, but were withdrawn on the petitioner's satisfying the concerned authorities that the land was not being used for any purpose other than the purpose for which it was leased.

It thus, appears from the order made by the Collector on 5.7.1986, which is at Annexure "B" to the petition that the Collector took into account the representations made by the Secretary of the workers' union of the mill, 101 applications of the residents nearby the land in question and the report of the Mamlatdar Wankaner for holding that the land was being diverted for some other use. There is no indication on the record to show that any of this material was ever disclosed to the petitioner before placing reliance on it. There is no reference at all to this material in the show cause notice. The petitioner in paragraph 3.4 of the petition has in terms stated that this material was not disclosed and no enquiry report was ever given to the

petitioner. In the affidavit-in-reply filed by the Mamlatdar, Wankaner it is stated that at the time of the hearing of the show cause notice, the petitioner had an ample opportunity to produce his evidence to show that the land in question was being used for the purpose it was leased. When the Department was making an allegation that the land was being diverted to a different use, it was obviously for the Department to show that it was so diverted. The Collector relied upon the material which was never disclosed to the petitioner, thereby violating the principles of natural justice. In paragraph 3 of the affidavit-in-reply, the Mamlatdar has stated that the land was given to the petitioner by the then Ruler of Wankaner on a lease for hundred years from the date of the lease-deed executed in the year 1946 and that it was to be used for running a 'Vyayam Shala'. If the land was given on lease for 100 years, obviously valuable rights were created in favour of the petitioner and therefore, it was incumbent upon the concerned authority to disclose the material on which it relied for the purpose of determining the lease and resuming the land. The impugned orders are thus, in violation of the principles of natural justice and cannot be sustained. The impugned orders are therefore, hereby set aside. Rule is made absolute with no order as to costs.

*/Mohandas